

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2464 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?  
No.

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AMRUTLAL MAFATLAL PAREKH

Versus

STATE OF GUJARAT

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Appearance:

MR P. UPADHYAY for Petitioner

MR DA BAMBHANIA for Respondent No. 1

MR VB GHARANIYA, AGP for Respondent No. 2

MR HS MUNSHAW for Respondent No. 3

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 28/07/98

ORAL JUDGEMENT

Rule. Mr. V.B. Gharaniya, learned AGP waives service of rule on behalf of respondent no.1 and 2. Mr. H.S. Munshaw, learned advocate waives service of rule on behalf of respondent no.3.

2. The petitioner Amrutlal Mafatlal Parekh has filed the present petition seeking a writ of mandamus against respondent no.1 and 2.

3. It is case of the petitioner that he was appointed as a peon on 9.11.1978 in the respondent no.3 transport service and he was working in that capacity. Thereafter on 28-5-90, he had applied for the post of bailiff in the Traffic Branch of the Ahmedabad Municipal Transport Service. He was interviewed and thereafter on 1-7-1991 an office order was issued to give him work of bailiff and that he worked in the said capacity of the bailiff till 1992, but, for one or another reason the appointment order was not issued to the petitioner and no scale of bailiff is given to him. He, therefore, made an application to the respondent no.1 and 2 on 13-3-95 but the said application was rejected by refusing to make a reference to consider the question as to whether petitioner is entitled to get the post of bailiff and if he is entitled from what date. The said rejection order was communicated to him by letter dtd.16-8-1995. Thereafter he made a fresh representation to the respondent no.2 and 3 vide application dtd. 4-6-1997 but no action of the said representation made by the respondent no.1 and 2. He has filed the present petition.

3. The learned advocate for respondent no.3 Mr. Munshaw vehemently urged before me that once his claim for making representation is rejected, his second representation could not be entertained and no reference could be made on the basis of the representation made by him on 4-6-97. Mr. Munshaw vehemently urged before me that atleast he must produced some material to show that there is justification for making his second representation and that there would be a justification of the Government to make a reference, once his application is rejected by the Government. The said submission made by Mr. Munshaw could not be accepted, in view of the decision of the Apex Court held in the case of M/s. Avon Services Production Agencies (P.) Ltd. Vs. Industrial Tribunal, Haryana and Others - A.I.R. 1979 Supreme Court 170, wherein, the following principles laid down.

"The Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer. Nor is it necessary that the Government must have some fresh material made available to it subsequent to its refusal to make a reference, for the formation of a fresh opinion, for making the reference."

The same view is also taken by the Apex Court in the earlier decision of BINNY LIMITED Vs. THEIR WORKMEN A.I.R. 1972 Supreme Court 1975. Therefore, in view of the above decisions of the Apex Court, I am unable to accept the submission made on behalf of the respondent no.3.

4. The petitioner has stated in the petition certain grounds on which he is making a claim for reference. According to him, he has applied for the post of bailiff. He was interviewed on 13-1-91, and by an office order dtd.1-7-1991, he was given the work of bailiff and carried out the said work till 1992, and thereafter he has not been confirmed in the post of bailiff and no grade of bailiff is given to him. Now, it is for the respondent no.2 and 3 to consider the said averments made by the petitioner and then to take its own decision as to whether a reference is to be made or not. Therefore, in these circumstances, I would direct the respondent no.2 to take the decision for the representation made by the present petitioner on 4-6-97 within three months from today and to communicate the petitioner its decision regarding the same.

5. Thus I made the rule absolute in the above terms and disposed of the petition with no order as to costs.

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